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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/491,146	01/25/2000	Yury E. Khudyakov	03063-0381	8145
23859	7590	01/28/2004	EXAMINER	
NEEDLE & ROSENBERG, P.C. SUITE 1000 999 PEACHTREE STREET ATLANTA, GA 30309-3915			LUCAS, ZACHARIAH	
			ART UNIT	PAPER NUMBER
			1648	

DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/491,146

Applicant(s)

KHUDYAKOV ET AL.

Examiner

Zachariah Lucas

Art Unit

1648

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 17,19 and 31-34

Claim(s) objected to: _____

Claim(s) rejected: 13,16 and 18

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☒ Other: See Continuation Sheet

Continuation of 3. Applicant's reply has overcome the following rejection(s): the indefiniteness rejection of claims 31-34 under 35 U.S.C. 112, paragraph 2.

Continuation of 5. does NOT place the application in condition for allowance because: the Examiner does not find Applicant's argument with reference to the 103 rejections of claims 13, 16, and 18 persuasive.

In the After Final Amendment, the Applicant has provided further arguments in traversal of the rejection of claims 13, 16, and 18 over the combination of the Khudyakov, Zhang, Bukh, and Chien, and the individual reference Valenzuela.

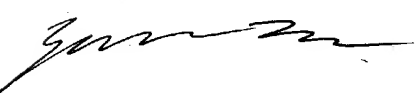

With reference to the combination of the Khudyakov, Chien, and Zhang references, the Applicant argues that the combination would only be obvious when those in the art are "aware of the art disclosed in the present application, and therefore such a rejection utilizes impermissible hindsight." However, as indicated in the responses to the Applicant's previous arguments in traversal, the references themselves provide adequate motivation to combine their teachings. See e.g., pages 9-10, and 11-13 of the December 2002 action, and pages 5-6 of the August 2003 action. Presently, the Applicant further challenges the combination of the teachings of Zhang with Chien and Khudyakov. The Applicant argues that there is no motivation for the combination of the method taught by this reference with the methods of Khudyakov and Chien. This argument is not found persuasive because Zhang is not relied on to teach the making of a chimeric protein. Rather, the reference merely demonstrates that one of ordinary skill in the art of the presently claimed invention would have known to use the sets of antigens indicated by the present claims in the making of a chimeric antigen for use in detecting HCV antibodies. This is because the reference teaches that these are the antigens required for effective detection of the antibodies in a sample.

The Applicant additionally reiterates their prior traversals on the grounds that Khudyakov and Chien focus on different viruses and chimeric proteins, and that the REAL technique disclosed in the present application is more fully enabling of the claimed products than was the prior art. These arguments have been adequately responded to in the prior actions.

b

With reference to the Valenzuela reference, the Applicant argues that, because Valenzuela teaches additional limitations over the claimed invention, those in the art would not have expected the claimed invention to work. This is not found persuasive both for the reasons of record, and because the Valenzuela provides no basis for the Applicant's assertion. Valenzuela explicitly states that the chimeric protein disclosed therein is an improvement over the previously known chimeric proteins, noting the Chien reference as teaching one such protein. Columns 7-8. The reference does not, however, indicate that the previously known method of detecting HCV antibodies were ineffective. Thus, the Applicant's traversal on this ground is not found persuasive.

Continuation of 10. Other: The Applicant has again asserted that claims 1-12, and 20-30 are pending but withdrawn in the application. This is not a correct indication of the status of the claims. These claims were cancelled from the application by the Applicant in the Preliminary Amendment filed with the application on January 25, 2000.



JAMES HOUSEL 1/26/04
SUPERVISORY PATENT EXAMINER
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